

By: Eiland

H.B. No. 1639

Substitute the following for H.B. No. 1639:

By: Elkins

C.S.H.B. No. 1639

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the authority of the attorney general to bring suit on
3 behalf of individuals injured by unlawful practices in restraint of
4 trade.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subchapter C, Chapter 15, Business & Commerce
7 Code, is amended by adding Section 15.211 to read as follows:

8 Sec. 15.211. ATTORNEY GENERAL MAY BRING SUIT ON BEHALF OF
9 INJURED PERSONS. (a) The attorney general may bring suit under
10 Section 15.21(a) of this Act on behalf of a governmental entity and,
11 as parens patriae, on behalf of an individual residing in this state
12 for damages incurred directly or indirectly because of a violation
13 of Subsection (a), (b), or (c) of Section 15.05 of this Act.

14 (b) In any suit brought by the attorney general as parens
15 patriae under Subsection (a):

16 (1) the attorney general shall give the best
17 practicable notice through any means necessary to give due process
18 of law to the affected individuals, as required by the court;

19 (2) an individual on whose behalf the attorney general
20 brings suit may elect to exclude from adjudication the portion of
21 damages attributable to the individual by filing notice of the
22 individual's election with the court not later than the date
23 specified in the notice provided under Subdivision (1);

24 (3) the final judgment is res judicata for the matters

1 alleged or proven in the suit as to any claim under this Act on
2 behalf of an individual:

3 (A) on whose behalf the attorney general brought
4 the action; and

5 (B) who fails to comply with Subdivision (2); and

6 (4) the damages awarded shall be distributed to ensure
7 that each individual has a reasonable opportunity to secure a fair
8 share of the damages.

9 (c) If claims based on substantially the same conduct are
10 asserted against a defendant by the attorney general on behalf of
11 indirect purchasers and by direct purchasers, the court shall avoid
12 imposing duplicate liability for the same injury.

13 (d) The right to sue under Subsection (a) applies only to
14 the attorney general and does not create a right of another person,
15 including another governmental entity, to sue on its own behalf for
16 damages incurred indirectly because of a violation of Subsection
17 (a), (b), or (c) of Section 15.05 of this Act.

18 SECTION 2. The change in law made by this Act applies only
19 to a suit arising out of an injury that an individual suffers on or
20 after the effective date of this Act. A suit arising out of an
21 injury suffered by an individual before the effective date of this
22 Act is governed by the law in effect at the time the individual
23 suffered the injury, and the former law is continued in effect for
24 that purpose.

25 SECTION 3. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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- 1 Act does not receive the vote necessary for immediate effect, this
- 2 Act takes effect September 1, 2005.